

REMARKS

Claims 1, 3, 5, 7-15, 17-20, 24, and new claims 25-32 are presented for the Examiner's review and consideration. Applicants appreciate the Examiner's indication that claims 12-15 contain allowable subject matter. No new matter has been added, as the amendments and new claims are supported by the specification as originally filed.

As an initial matter, applicants acknowledge that the petition to correct inventorship filed on 4/20/2001 has been granted, and that Cory W. Carter has been added as an inventor in this application. Applicants further acknowledge that the Information Disclosure Statements filed on July 19, 2001 and October 25, 2002 list a duplicate reference (U.S. Patent No. 5,968,078). Applicants also acknowledge that the election of claims 1-20 and 24 has been treated as an election without traverse, and that claims 2, 4, 6, 16 and 21-23 have been withdrawn from consideration by the Examiner. It remains applicants position, however, that claims 1, 7-11, 17-20, and 24 are generic to Species A, B, C, and D and that dependent claims 2, 4, 6, and 16 will be allowed upon allowance of the base claim.

In the Office Action, the Examiner objected to the title as not being clearly indicative of the subject matter to which the claims are directed. Claim 1 is directed to a fixation device for securing a graft to bone. Claim 24 is directed toward a method for attaching a graft to bone. Applicants propose an amended title of "Fixation Device and Method for Securing a Graft to Bone." Applicants respectfully request that the Examiner approve the proposed amended title.

Claims 1, 3, 5, 11, 17, 20, and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,152,790 to Rosenberg *et al.* ("Rosenberg"). Applicants respectfully disagree.

Independent claim 1 recites, *inter alia*, a fixation device comprising an implant body having first and second ends, the second end having a recess. Claim 1 also recites, *inter alia*, a graft interface member having an implant coupling portion, at least a portion of the coupling portion is configured and adapted to be received in the recess. The Examiner stated that FIG. 2 of Rosenberg discloses an "implant body" (22) having a "second end" (34) and a "graft interface member" (20) having an "implant coupling portion" (48). (Office Action, page 3, lines 14-19). The Examiner also stated that the trailing end (36) of the sleeve member (22) was the "first end" of the implant body. (Office Action, page 3, lines 13-14). The purported graft interface member (20) of Rosenberg, however, is not configured and adapted to be received in the purported recess on the purported second end (34) of the implant body (22), as required by claim 1. Rather, ring (20) is seated on insert (18), which is then inserted into the purported first end of the

purported implant body (22). Thus, Rosenberg lacks a graft interface member configured and adapted to be inserted into a recess, as well as a graft interface member adapted to be inserted into the recess on the second end of the implant body, as required by claim 1. Although, Rosenberg does teach that insert (18) may be eliminated and the ring (20) secured by a flange on the trailing end (36) of the sleeve (22), this teaching fails to remedy the deficiency of the three piece assembly (16) because the purported implant coupling portion would be connected to a projection on the purported first end of the implant body. (Rosenberg, 5:40-51). There is, therefore, no disclosure, teaching or suggestion in Rosenberg of an "implant coupling portion," wherein "at least a portion of the coupling portion is configured and adapted to be received in the recess to permit the implant body to rotate independently of the graft interface member." As Rosenberg does not disclose, teach, or suggest each and every limitation recited by claim 1, Rosenberg does not anticipate claim 1 and the rejection of claim 1 under 35 U.S.C. § 102(b) should be withdrawn.

With respect to claims 3, 5, 11, 17, and 20, which depend from independent claim 1, applicants submit that because these claims define more particular aspects of applicants' invention in addition to the features and elements of independent claim 1, these claims are also patentably distinct from Rosenberg for the same reasons as claim 1, as well as the additional features of the respective claims. As the features and elements recited in claims 3, 5, 11, 17, and 20 are not disclosed, suggested or taught by Rosenberg, applicants respectfully request that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Independent claim 24 was rejected under 35 U.S.C. § 102(b) as being anticipated by Rosenberg. Claim 24 recites, *inter alia*, attaching the first end of the graft to the graft interface portion of the fixation device along the central longitudinal axis. Rosenberg, by contrast, discloses suturing a graft (24) to a tie slot (50) such that the graft is not held coincident with the central longitudinal axis of the anchor assembly (16). (*Id.*, FIG. 3; 4:20-26). Thus, the graft anchor assembly (16) of Rosenberg does not disclose, teach or suggest a method of holding a graft in centered axial alignment with the longitudinal axis of the fixation device as required in claim 24. Accordingly, applicants respectfully submit that the Examiner's rejection of independent claim 24 under 35 U.S.C. § 102(b) as being anticipated by Rosenberg should be withdrawn.

Claims 7-10, which depend from independent claim 1, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosenberg in view of U.S. Patent No. 5,643,267 to Hitomi *et al.* ("Hitomi"). As described above, Rosenberg does not disclose, teach or suggest each and every limitation of claim 1. Hitomi, which is directed toward a

bone connector adapted for joining cut bone ends, does not remedy the deficiency of Rosenberg. Applicants respectfully submit, therefore, that the rejection of claims 7-10 under 35 U.S.C. § 103(a) is insufficient to render these claims obvious and should be withdrawn.

Claims 18-19, which depend from claim 1, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosenberg in view of U.S. Patent No. 6,129,763 to Chauvin *et al.* ("Chauvin"). As described above, Rosenberg does not disclose, teach or suggest all the limitations recited by claim 1. Chauvin, which is directed toward an osseosynthesis cage, does not remedy the deficiency of Rosenberg. Thus, applicants respectfully submit that the rejection of claims 18-19 under 35 U.S.C. § 103(a) has also been overcome and should be withdrawn.

New claims 25-32 are presented for the Examiner's consideration. New claims 25-29 depend from independent claim 1 and recite additional features and elements of the fixation device. New independent claim 29 and dependent claims 30-32 recite features of the method for attaching a graft to bone. No new matter has been added, as the amendments and new claims are supported by the specification as originally filed.

In view of the foregoing amendments and remarks, it is submitted that all rejections have been overcome and should be withdrawn. Thus, all claims are in condition for allowance, early notice of which is requested.

Applicants believe that fees are due in connection with the submission of this amendment as indicated in the attached Petition for Extension of Time and as calculated on the attached Fee Transmittal Sheet. Should any other fees be required, please charge such fees to Pennie & Edmonds Deposit Account No. 16-1150.

Respectfully submitted,



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